



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-12; DA 13-60]

Auction of Lower and Upper Paging Bands Licenses Scheduled for July 16, 2013; Comment Sought on Competitive Bidding Procedures for Auction 95

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain Paging Bands licenses scheduled to commence on July 16, 2013. This document also seeks comment on competitive bidding procedures for Auction 95.

DATES: Comments are due on or before February 22, 2013, and reply comments are due on or before March 14, 2013.

ADDRESSES: All filings in response to this public notice must refer to AU Docket No. 13-12. The Wireless Telecommunications Bureau strongly encourages interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: auction95@fcc.gov. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of **before** entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For auction legal questions: Howard Davenport at (202) 418-0660; for general auction questions: Debbie Smith or Linda Sanderson at (717) 338-2868. Mobility Division: For Paging service rule questions: Kathy Harris (legal) or Keith Harper (technical) at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 95 Comment Public Notice released on February 1, 2013. The complete text of the Auction 95 Comment Public Notice, including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The Auction 95 Comment Public Notice and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its website: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13-60. The Auction 95 Comment Public Notice and related documents also are available on the Internet at the Commission's

website: <http://wireless.fcc.gov/auctions/95/>, or by using the search function for AU Docket No. 13-12 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs/>.

I. INTRODUCTION

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 5,905 paging licenses to commence on July 16, 2013, and is designated as Auction 95.) The Bureau seeks comment on the procedures to be used for this auction. The licenses available in Auction 95 consist of 4,902 licenses in the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, 454-460 MHz) and 1,003 licenses in the upper paging bands (929-931 MHz).

II. LICENSES TO BE OFFERED IN AUCTION 95

2. Auction 95 will offer licenses that remained unsold from previous auctions, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

3. Attachment A to the Auction 95 Comment Public Notice provides a summary of the licenses available in Auction 95. Due to the large number of licenses in Auction 95, the complete list of licenses available for this auction will be provided in electronic format only, available as separate Attachment A files at <http://wireless.fcc.gov/auctions/95/>.

A. License Descriptions

4. The Commission has concluded that the lower band licenses should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the upper bands licenses should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs encompass the United States, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and American Samoa.

5. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B to the Auction 95 Comment Public Notice. These licenses are limited to bandwidths of 20 kilohertz (kHz) or 20 kHz pairs (40 kHz total). Licensees may use the spectrum to provide (1) one-way messaging, (2) two-way messaging, and (3) fixed wireless services. Provision of these services is subject to the technical limitations set forth for the service in Part 22 of the Commission's rules.

B. Incumbency Issues

6. There are pre-existing paging incumbent licenses. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

III. DUE DILIGENCE

7. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that an FCC auction represents an opportunity to become an FCC licensee in the paging service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.**

8. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 95 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

9. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 95 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its decisions regarding participation in the auction.

10. The Bureau strongly encourages participants in Auction 95 to continue such research throughout the auction. The due diligence considerations mentioned in the [Auction 95 Comment Public Notice](#) does not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

IV. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

11. The Commission directed the Bureau, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. Therefore the Bureau seeks comment on the following issues relating to the conduct of Auction 95.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

12. The Bureau proposes to auction all licenses included in Auction 95 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

ii. Anonymous Bidding

13. In several prior auctions the Commission has adopted procedures to limit the disclosure of certain bidder-specific information until after the auction. Consistent with that practice, the Bureau proposes to conduct Auction 95 using certain procedures for limited information disclosure or anonymous bidding. Specifically, the Bureau proposes to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

14. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals and the net bid amounts would not be disclosed until after the close of the auction.

15. Bidders would have access to additional information about their own bids. For example, bidders would be able to view their own level of eligibility, before and during the auction, through the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System).

16. Moreover, for the purpose of complying with 47 CFR 1.2105(c) prohibiting certain communications between applicants (formerly referred to as the anti-collusion rule), applicants would be made aware of other applicants with which they will not be permitted to cooperate, collaborate, or communicate, including discussing bids, bidding strategies, or post-auction market structure. Specifically, the Bureau would notify separately each applicant in Auction 95 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 95, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

17. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

18. The Bureau seeks comments on its proposal to implement anonymous bidding in Auction 95. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 95. When the Commission first proposed limited information disclosure procedures, it did so in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction. The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

iii. Bidding Rounds

19. Auction 95 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

20. The Commission will conduct Auction 95 over the Internet using the Commission's Integrated Spectrum Auction System (FCC Auction System). Bidders will also have the option of placing bids by telephone through a dedicated Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

21. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iv. Stopping Rule

22. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 95, the Bureau proposes to employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, unless the Bureau announces alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

23. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 95: (a) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places

any new bids on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an FCC-held license) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b); (d) Declare the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; and (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

24. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

v. Information Relating to Auction Delay, Suspension, or Cancellation

25. For Auction 95, the Bureau proposes that it may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous

round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureau emphasize that it will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

26. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments that are related to the specific licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. For Auction 95, the proposed upfront payments are equal to the proposed minimum opening bids. The Bureau seeks comment on this proposal.

27. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureau proposes to assign each license a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed for the license. The specific bidding units for each license are set forth in the complete list of licenses available for Auction 95, available as separate Attachment A files at <http://wireless.fcc.gov/auctions/95/>. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder may place bids on multiple licenses, provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureau requests comment on these proposals.

ii. Activity Rule

28. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids placed in previous rounds. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

29. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

30. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction: **Stage One:** In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths ($5/4$). **Stage Two:** In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ($20/19$).

31. The Bureau requests comment on these activity requirements. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

32. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers, which can be either proactive or automatic, are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

33. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

34. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

35. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity

rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

36. Consistent with recent FCC auctions, the Bureau proposes that each bidder in Auction 95 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

37. The Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

38. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

39. The Bureau proposes to establish minimum opening bid amounts for Auction 95. The Bureau believes that a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose to establish separate reserve prices for the licenses to be offered in Auction 95.

40. As the Bureau did for the last auction of paging licenses, Auction 87, the Bureau proposes to set the minimum opening bid for each license available in Auction 95 at \$500. The Bureau seeks comment on this proposal.

41. If commenters believe that these minimum opening bid amounts will result in unsold licenses, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. If requesting a lower minimum opening bid amount for a specific

license offered in this auction, a commenter should justify the requested amount in detail. The Bureau asks commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on factors that could reasonably have an impact on valuation of the spectrum being auctioned, including levels of incumbency within these spectrum bands, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors. The Bureau has not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and has instead proposed low minimum opening bid amounts that are intended to reflect overall incumbency levels. The Bureau seeks comment on this approach, on whether the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

42. The Bureau proposes that, in each round, an eligible bidder will be able to place a bid on a given license using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Bureau proposes to calculate bid amounts.

a. Minimum Acceptable Bids

43. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be a certain percentage higher. That is, the FCC will calculate the minimum acceptable bid amount by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license. The Bureau proposes to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

b. Additional Bid Amounts

44. The FCC will calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposes to use a bid increment percentage of 5 percent.

45. For Auction 95 the Bureau proposes to start with eight additional bid amounts (for a total of nine bid amounts). The Bureau seeks comment on this proposal. If commenters believe the Bureau should start with fewer or no additional bid amounts, they should address the issue of additional bid amounts in light of particular circumstances of Auction 95, including the nature of the license inventory.

c. Bid Amount Changes

46. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. The Bureau seeks comment on the circumstances under which the Bureau should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other

parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

47. The Bureau seeks comment on these proposals. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

vi. Provisionally Winning Bids

48. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received. If identical high bid amounts are submitted on a license in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the license receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

49. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. The Bureau reminds bidders that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal

50. For Auction 95, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively undo any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment.

Once a round closes, a bidder may no longer remove a bid. The Bureau seeks comment on this bid removal proposal.

viii. Bid Withdrawal

51. The Bureau seeks comment on the following bid withdrawal procedures for Auction 95. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.

52. The Bureau has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission has stated that the Bureau should exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

53. For Auction 95, the Bureau proposes to limit each bidder to withdrawing provisionally winning bids in only one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g). The Bureau seeks comment on these bid withdrawal procedures. If commenters believe that each bidder should be allowed to withdraw provisionally winning bids in more than one round during the course of the auction, they should state how many bid withdrawal rounds they seek and explain what specific factors lead them to that conclusion. If commenters believe that bidders in this auction should not be permitted to withdraw any bids, they should discuss their reasoning for this suggestion.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

54. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. 47 CFR 1.2104(g)(1) requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

55. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses. With respect to the licenses being offered in Auction 95, the service rules permit a variety of fixed, mobile, and paging services, though the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than has been the case in previous auctions of paging licenses. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid

withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

ii. Additional Default Payment Percentage

56. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 95 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

57. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

58. For Auction 95, the Bureau proposes to establish an additional default payment of ten percent. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional ten percent default payment will be more effective in deterring defaults than the three percent used in some earlier auctions. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction 95 are likely to be unusually great. The Bureau seeks comment on this proposal.

V. EX PARTE RULES

59. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission

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